

KEKER & VAN NEST LLP
 ROBERT A. VAN NEST - # 84065
 rvannest@kvn.com
 BRIAN L. FERRALL - # 160847
 bferrall@kvn.com
 DAVID SILBERT - # 173128
 dsilbert@kvn.com
 MICHAEL S. KWUN - # 198945
 mkwun@kvn.com
 633 Battery Street
 San Francisco, CA 94111-1809
 Telephone: 415 391 5400
 Facsimile: 415 397 7188

Attorneys for Defendant ARISTA
 NETWORKS, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

v.

ARISTA NETWORKS, INC.,

Defendant.

Case No. 5:14-cv-05344-BLF (PSG)

**DEFENDANT ARISTA'S
 SUPPLEMENTAL PROPOSED
 DISCOVERY PLAN**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

Pursuant to the Court's Order at the case management conference held on January 28, 2016, Defendant Arista Networks, Inc. hereby submits this supplemental proposed discovery plan detailing Arista's plans for the 40 depositions that Arista has requested. *See* Dkt. No. 179. Cisco will file its response to this plan by February 16, 2016, per the parties' meet and confer efforts.

The chart below lists the depositions that Arista has already taken, the depositions Arista has noticed but not yet taken, and the depositions Arista seeks to notice under an increased deposition limit. The Court previously increased the deposition limit to 20 depositions—140 hours. Arista has used 37 of those hours on 7 depositions. Below, Arista sets forth the various categories of further deposition Arista must take to defend against Cisco's copyright and patent

claims. Although many more than 40 individuals have been targeted for possible deposition, Arista believes that if Cisco diligently completes document production and cooperates with discovery, Arista can adequately cover the necessary topics in a total of 40 depositions. Moreover, in view of the efficiencies Arista has been able to achieve in depositions thus far, Arista anticipates that it will not require a full seven hours for each of the remaining depositions. Accordingly, though Arista seeks to depose a total of 40 percipient witnesses and third-party entities, it seeks leave to use only 200 total deposition hours—60 more hours than the 140 the Court previously approved.¹

The individual “CLI authors” identified below were all identified by Cisco as having authored or originated CLI commands that Cisco asserts in this case. Arista has identified the authors it thinks are most relevant to Cisco’s claims. Thus far, Arista has taken or noticed the depositions of authors who, collectively, represent 120 commands. Overall, even if Arista takes all of the depositions identified below, it will depose only 17 authors who collectively represent at most 231 commands, out of a total of 168 authors and 514 individual asserted commands. Arista notes that, as Judge Grewal found, Cisco has advanced a theory that each of these 514 commands is independently protected by copyright; accordingly it cannot complain that some deposition discovery is conducted on an individual-command basis. *See* Dkt. No. 83 at 4:6–8 (“To the extent that investigating and producing information on those works’ creation creates a large burden, that burden is one of Cisco’s own making.”).

7 Depositions Already Taken	
Deponent	Relevance
Anthony Li	Cisco listed Mr. Li for 13 commands, making him the 6th most prolific “author” on Cisco’s list. Mr. Li testified that several of Cisco’s CLI terms originated in systems that pre-exist Cisco, such as “show,” that Cisco’s CLI was modeled on an older system called TOPS-20, and that one of the commands attributed to him was coined by someone outside of Cisco. He explained that many other commands used terms that were set and defined by

¹ Arista notes that, as the Court previously ordered, the deposition limit applies to percipient witness testimony, not to Rule 30(b)(6) depositions.

	standards-setting bodies in the industry. He testified that he founded a competitor to Cisco in 1999, called Procket, which openly used a CLI that was identical to Cisco's, down to the bugs, and Cisco, which had board-observer rights in Procket, never voiced any objection. Mr. Li could not confirm that he authored several of the commands for which Cisco listed him, and testified that, to his knowledge, no one at Cisco considered CLI commands to be proprietary when he worked there, and that they were commonly understood in the industry to be an industry standard available for anyone to use.
Tong Liu	Cisco listed Ms. Liu for 5 commands related to the PTP industry standard, including "show ptp clock." She admitted that the words she used in the commands she "authored" came from—and are actually defined terms in—an IEEE standard for PTP, and she further admitted that she had reviewed that IEEE standard before creating the commands. She also testified that market interoperability was a major factor in the adoption of the commands for which she is listed.
Kirk Lougheed	Cisco listed Mr. Lougheed for 41 commands—the most of anyone (although at the time of his deposition Cisco only associated 36 commands with Mr. Lougheed). Cisco additionally identified Mr. Lougheed as the creator of the accused command modes, prompts, and hierarchies. Mr. Lougheed testified that, in fact, several of the commands use terms and phrases coined by others or widely used in the industry. He also testified that some of those commands originated at Stanford, not at Cisco, and that he took the commands from Stanford when Cisco was founded. Mr. Lougheed's commands include "show users," "ip address," and "boot system."
Abhay Roy	Mr. Roy is listed for 20 commands, making him number four on Cisco's list. His commands relate to industry-standard IPv6 and OSPF features, including for example "show ipv6 ospf." Mr. Roy testified that, for certain of the commands he authored, every word was taken directly from an industry standard, and that the commands implement the same functionality described in the industry standard.
Terry Slattery	Mr. Slattery is listed as the creator of interactive "help" screens, responses to the "help" command, and context-sensitive descriptions of commands in Cisco's IOS, which Cisco contends Arista copied. Mr. Slattery also had a substantial role in rewriting Cisco's CLI code in 1991–92. He explained how CLI is used in the marketplace, and discussed the benefits to customers of multi-vendor switch networks, which are enabled by a common CLI. He also explained Cisco's CCIE certification program.
Jung Tjong	Mr. Tjong is one of the named inventors of the '886 patent. He testified about the conception and reduction to practice of the '886 patent, and testified that the claim term "XML" refers to a language standardized by the World Wide Web Consortium.
Jeffrey Wheeler	Mr. Wheeler is the first named inventor on the '526 patent. Mr. Wheeler, however, testified that he was unfamiliar with certain aspects of the alleged invention, and deferred questions about that subject to another named inventor, Paul Mustoe.

11 Depositions Already Noticed by Third-Party Subpoena	
Deponent	Relevance
Ram Kavasseri	Mr. Kavasseri is listed for 8 commands relating to industry standard “SNMP,” including for example “show snmp user.” He is number 13 on Cisco’s list. Mr. Kavasseri’s commands are similar to commands in other systems that pre-date Cisco. The commands also use terms that are defined by industry standards.
Pedro Marques	Mr. Marques is listed for 15 commands, including for example “ipv6 address.” He is number 5 on Cisco’s list. Several of Mr. Marques’ terms are identical or almost identical to terms in industry standards.
Devadas Patil	Mr. Patil is listed for 12 commands relating to industry standard LLDP, including for example “show lldp.” He is number 8 on Cisco’s list. Several of Mr. Patil’s commands use terms that appear to mimic industry standards, and Arista has evidence that Mr. Patil consulted industry standards in formulating commands.
Gregory Satz	Mr. Satz is listed for 5 commands, including “snmp-server host.” Mr. Satz was a founding member of Cisco, and he worked at Stanford—where much of Cisco’s original software originated—before founding Cisco.
Avaya, Brocade, Dell, Juniper Networks, Hewlett-Packard, and Lenovo ²	<p>The testimony of these competitors directly bears on Arista’s estoppel, laches, fair use, and misuse defenses. Each uses a command line interface that includes many of the same commands asserted in this case—indeed, hundreds of those commands in some cases. They did so openly, for years, and many described their CLIs as “industry standard.” Arista expects each of these competitors to testify that they used the same commands openly because they, and the industry, understood that the commands were not proprietary.</p> <p>The competitors may also testify about their interactions with customers relating to CLI commands.</p> <p>Finally, Avaya, Hewlett-Packard, and Juniper also have information relevant to invalidating prior art to Cisco’s asserted patents.</p>
Stanford University	Mr. Loughheed testified that he walked out of Stanford to found Cisco with code that belonged to Stanford. This incident resulted in a legal dispute and license agreement between Cisco and Stanford. Stanford will testify as to the details of the legal dispute and license agreement, and the ownership of the commands that may have originated at Stanford, not Cisco.

² Arista also noticed the deposition of IBM, which recently sold its switch and routing business to Lenovo. After meeting and conferring with IBM’s attorneys regarding relevant documents and information in IBM’s possession, Arista has put the deposition of IBM on hold.

22 Depositions Arista Seeks to Take	
Deponent	Relevance
9 CLI authors	<p>Arista intends to depose 9 of the following 18 individuals listed by Cisco as authors of CLI commands. Arista cannot now be certain which 9 of these 18 will be deposed because many are third parties who may not be able to testify via subpoena. Arista also expects that some authors will require less deposition time than others.</p> <p>Each individual is listed for several commands. Arista expects that each individual will testify in detail about the commands for which they are listed and in particular that those commands stem from industry standards, common usage, or software systems that pre-date Cisco's founding, undermining Cisco's argument that each command was independently created by Cisco. Arista also expects that these individuals may contradict Cisco's claims that they authored all of the commands for which they are listed. The authors below were chosen as a representative sample of the most prolific authors from different time periods and types of commands.</p> <ol style="list-style-type: none"> 1. Senthil Arunachalam (6 commands; top 25 author) 2. Nataraj Bacthu (8 commands; #15 author) 3. Mark Baushke (9 commands; tied as #11 author) 4. Enke Chen (7 commands; tied as #16 author) 5. Graham Critchfield (9 commands; tied as #11 author) 6. Dino Farinacci (24 commands; #2 author) 7. Dan Florea (5 commands; top 25 author) 8. David Hampton (21 commands; #3 author) 9. Andrew Heffernan (7 commands; tied as #16 author; author of industry standard document relating to asserted commands) 10. David Katz (11 commands; #10 author) 11. Ronnie Kon (3 commands, including "clock set") 12. Frederick Scott (7 commands; tied as #16 author) 13. Robert Snyder (2 commands; public comments indicate he does not consider commands copyrightable) 14. Francois Tallet (12 commands; #9 author) 15. Paul Traina (6 commands; #20 author) 16. Ole Troan (9 commands; tied as #11 author) 17. Bill (William) Westfield (5 commands; #27 author) 18. Rob Widmer (13 commands; #7 author)
Fred Baker	Mr. Baker is a former Chair of the Internet Engineering Task Force (IETF) and a Cisco employee who has written several industry standard –setting documents that are directly relevant to the asserted commands.
Phillip Remaker	Cisco has insisted repeatedly that Arista need depose only two individuals related to the authorship of CLI commands. The first is Kirk Loughheed, whom Arista has already deposed. The second is Mr. Remaker, who is

	listed for only one accused command, but whom Cisco maintains played a substantial role in the development of Cisco's CLI and the command syntax used therein.
D-Link, Edge-Core, and Extreme	<p>The testimony of these competitors directly bears on Arista's estoppel, laches, fair use, and misuse defenses. Each uses a command line interface that includes many of the same commands asserted in this case—indeed, hundreds of those commands in some cases. They did so openly, for years, and many described their CLIs as “industry standard.” Arista expects each of these competitors to testify that they used the same commands openly because they, and the industry, understood that the commands were not proprietary.</p> <p>The competitors may also testify about their interactions with customers relating to CLI commands.</p>
2 add'l patent inventors	Prakash Bettadapur is one of the named inventors of the '886 patent. Paul Mustoe is one of the named inventors of the '526 patent. Both are listed in Cisco's initial disclosures.
2–3 competitive personnel	<p>Cisco has produced documents demonstrating that it maintained an internal team called the “Arista Killer” team. It and another “Tiger” team were devoted to competing with Arista. Arista seeks to depose two individuals from those teams who will testify about Cisco's awareness for years of Arista's open use of CLI commands, just as other competitors used industry standard CLI commands. The testimony from these individuals will bear on Arista's estoppel, laches, fair use, and misuse defenses. These witnesses will also testify regarding the market and Cisco's view of its competition with Arista, which will also be relevant to Cisco's damages and request for injunctive relief.</p> <p>Cisco has failed yet to produce documents from a number of custodians in this category, and therefore Arista cannot definitively determine who it will depose. But Arista expects to select two to three witnesses from the following group: Andrew Pletcher, Brian Osoro, Cesar Obediente, Cynthia Broderick, Deepak Malik, Drago Sijan, John Chambers, Lilian Quan, Soni Jiandani, and Wayne Ogazaly.</p>
1–2 sales and marketing personnel	Arista seeks to depose one to two individuals relating to Cisco's claimed lost sales. Cisco has refused to identify specific lost sales, though it has promised it will produce such discovery in the future. Cisco's document production is also still ongoing. At this time, Arista anticipates it would depose John Hartingh and Leo Bolton, both of whom had responsibility for sales in competition with Arista. However, Arista may need to substitute a different witness for one or both of these individuals after Cisco completes its document production.
2 Cisco personnel knowledgeable about Tail-f	Tail-f and Network Compliance Manager are two products that Cisco sells. They allow customers to use Cisco CLI commands to configure other vendors' switches by translating Cisco CLI commands to competitors' CLI commands. Likewise, they use other vendors' CLI commands, to Arista's

1 and the
2 Network
3 Compliance
4 Manager

knowledge, without permission from those vendors. These products are highly relevant to Arista's estoppel, fair use, and misuses defenses. Cisco freely uses others' CLI commands, even while Cisco now claims that its CLI is proprietary.

Thus far, Arista has identified two Cisco employees with percipient knowledge of these products: Adrian Smethurst and Pradeep Kathail. Arista may need to substitute a different witness for one or both of these individuals after Cisco completes its document production.

8 DATED: February 5, 2016

Respectfully submitted,

10 /s/ Robert A. Van Nest

11 KEKER & VAN NEST LLP
12 ROBERT A. VAN NEST - # 84065
rvannest@kvn.com
13 BRIAN L. FERRALL - # 160847
bferrall@kvn.com
14 DAVID J. SILBERT - # 173128
dsilbert@kvn.com
15 MICHAEL S. KWUN - # 198945
mkwun@kvn.com
633 Battery Street
16 San Francisco, CA 94111-1809
Telephone: 415 391 5400
17 Facsimile: 415 397 7188

18 *Attorneys for Defendant Arista Networks, Inc.*